IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
CRIMINAL CONTEMPT PETITION NO.13 OF 2006

Shri H.K.Sharma
(Resident of Vishwa Mahal
Flat No.25, IVth Floor,
C-Road, Churchgate, Bombay-400 020 ...Petitioner.

V/s.

1. Shri Sanwarmal Kejriwal
   C/o Vishwa Mahal
   Flat No.25, IVth Floor,
   'C' Road, Churchgate,
   Bombay 400 020

2. Vishwa Co-op. H.S.Ltd.,
   having its registered office at
   Vishwa Mahal, C Road, Churchgate,
   Bombay 400 020.

3. Shri L.H.Patil
   President,
   The Maharashtra State Co-operative Appellate
   Court,
   Bombay.

4. The State of Maharashtra

5. Shri Sanjay S.Kejrwal
   C/o. Vishwa Mahal,
   Flat No.25, IVth Floor,
   'C' Road, Churchgate,
   Bombay 400 020. ..Respondents.

Shri H.K.Sharma Petitioner in person (absent) .
Mrs.M.M.Deshmukh, A.P.P. for the Respondent/State.

CORAM: B.H.MARLAPALLE &
J.H.BHATIA, JJ.
RESERVED ON :7th December, 2006.
PRONOUNCED ON: 14th December, 2006

P.C.: (Per J.H.Bhatia, J.)

1. The petitioner has filed this petition for

taking action for contempt of the Court against Respondent No.1 on the allegation that during the pendency of Dispute No.CCI/114/715/83 of 1986 before the Co-operative Court No.1, Bombay, Respondent No.1 had removed documents at Serial Numbers 43 and 44 alongwith the list of documents filed by Respondent No.1 himself. It appears that the dispute was filed by the Society-Respondent No.2. The Petitioner is a member of Respondent No.2-Society and is the owner of the flat and Respondent No.1 was a tenant. The dispute was before the Co-operative Court in which the Petitioner and Respondent No.1 were Opponent Nos.1 and 2 respectively. Record reveals that when the dispute was pending before the Co-operative Court, on 20th January, 1988 the present petitioner had made an application before the Co-operative Court contending that the documents mentioned at Serial Numbers 43 and 44 in the list of documents filed by Respondent No.1 were not in the bunch of documents and, therefore, he sought directions to Respondent No.1 to produce the said documents. The said documents were a letter written by the Petitioner to Respondent No.1 and its reply. That dispute was decided in favour of the Petitioner even though those documents were not produced. Respondent no.1 preferred an Appeal No.206 of 1988 before the Maharashtra Co-operative Appellate Court and that appeal also came to be

dismissed. On 14-10-1988, the petitioner made an application to the President, Co-operative Appellate Court alleging that during search on 12-10-1988, he found that the said two documents were removed by Respondent No.1 from the record of the Court sometimes between 11th to 20th January, 1988 and thus, he had committed contempt of the Court. On 15-11-1988 on the same allegations, he filed an application before the President, Co-operative Appellate Court to take action against the Respondent No.1 for contempt of the Court. However, the learned President rejected that application by an order dated 27th January, 1989 on the ground that removal of those documents from the record was a disputed question and further those documents were not very relevant for the decision of the matter because in spite of absence of those documents from the record in the dispute as well as in appeal, the present petitioner had been successful. Being not satisfied with the rejection of the said application, the present petitioner filed this Contempt Petition on 11-10-1989.

2. After careful perusal of the record, we are satisfied that firstly, removal of the said two documents from the record of the Court itself is a disputed question and the Courts below have not given any finding that Respondent No.1 had infact removed

those documents. Secondly, this contempt was allegedly committed when the matter was pending before the Co-operative Court. The President of the Co-operative Appellate Court, who is a superior to the Co-operative Court, has refused to make a reference for contempt of the Court against Respondent No.1 by rejecting the application filed by the present petitioner. Therefore, in view of provisions of Section 15(2) of the Contempt of the Courts Act also, this petition is not tenable. Thirdly, as per the provisions of Section 20, no Court shall initiate any proceedings for the contempt either on its own motion or otherwise, after the expiry of period of one year from the date on which contempt is alleged to have been committed. As pointed out above, according to the petitioner, the said documents were removed from the record between 11th to 20th January, 1988 and on 20th January, 1988, he had found that those documents were not on record and he had sought direction to produce the documents. The present petition was filed on 11-10-1989, i.e., long after expiry of period of one year after the alleged removal of record.

3. In view of the above circumstances, we find that it is not a fit case where this Court should take an action for contempt of Court against Respondent No.1.

4. Therefore, the petition stands dismissed and Rule is hereby discharged.

(J.H.BHATIA,J.) **(B.H.MARLAPALLE,J.)**